Federal Communications Commission
445 12th Street SW Room TW-A325
Washington, DC 20554

Re: CG Docket No. 02-278, FCC 03-02; Rule Implementing the Telephone Consumer Protection Act of 1991 ("TCPA")
Reply Comment

Ladies and Gentleman:

Citigroup Inc., New York, NY, is writing to supplement its prior comment letter of December 9, 2002, by addressing certain additional issues that have arisen as a result of the passage of the Do-Not-Call Implementation Act ("DNC Act"), the amendment by the Federal Trade Commission ("FTC") of its Telemarketing Sales Rule ("the FTC Rule"), and FTC's pending proposal to establish a fee schedule for access to the national "do-not-call" ("DNC") registry scheduled to take effect on or about October 1, 2003.

1. **Citigroup supports the FCC's proposal to maximize the consistency of its rules implementing the TCPA with the FTC Rule because the final FTC Rule has addressed a number of significant shortcomings of the proposed Rule.**

Citigroup is pleased to note that the actions taken by the FTC in adopting amendments to its Rule in December 2002 will facilitate the efforts of the FCC to "maximize the consistency" of its rules implementing the Telephone Consumer Protection Act with the FTC Rule, pursuant to directives of the DNC Act. In particular, Citigroup notes that the FTC addressed many of the critical concerns that a number of financial company commenters, including Citigroup, had discussed in their comments to the FTC and later to the FCC.

For example, the FTC Rule now includes an exception to the DNC requirements to permit telephone calls to consumers with whom the calling company has an "existing business relationship." It also requires quarterly, rather than monthly, updating of the national DNC list by those sellers using the list. The FTC Rule also provides that registration by consumers is effective only for a fixed period. All of these amendments to the original FTC proposal were included in the recommendations Citigroup made to the FCC in its December 9, 2002 comment letter. Finally, the FTC made the DNC requirements applicable only to outbound calls and not to upselling on incoming calls.

Citigroup continues to have concerns about the subjectivity of the requirement that the "existing business relationship" exception extends only to those affiliates of the company with the customer relationship that the customer would "reasonably expect to be included." Citigroup is also concerned that the FTC failed to include an exception for calls to arrange a face-to-face meeting to discuss a proposed sale of goods or services.

This point is more fully discussed in a separate comment being submitted by Citigroup's Primerica group of subsidiaries.

2. **The failure of the FTC to preempt the myriad of state DNC laws remains the most significant deficiency of the final FTC Rule, and this Commission can rectify that shortcoming without any amendment of the substantive terms of the FTC Rule.**

The major portion of Citigroup's December 9 letter addressed the benefits of a single national DNC registry. While Citigroup will not rehash those arguments, it would ask this Commission to consider the implications of this failure to impose a single national standard on one key aspect of the FTC Rule. The careful consideration provided by the FTC in adopting an exception to permit calls to consumers with whom the company has an existing business relationship is undercut by a number of state laws.

The FTC Rule permits a seller company to call existing customers, including those customers with whom it has had a business transaction within the prior 18 months. At least one state does not have such any such exception for calls to existing or prior customers. A number of states permit exceptions only for current customers, without any accommodation for prior customers with whom the company may have had a recent transaction. Those that permit an exception for prior customers require the most recent business transactions to have occurred within periods ranging from 6 to 36 months. Six other states have no limit on the time period since the previous transaction. On this single most critical exception, the FTC Rule is merely an overlay or addition to the differing requirements of at least 12 states that have more limited time periods than 18 months and, therefore, that apply in lieu of the FTC Rule.

A single national standard will address not only the administrative burdens and compliance difficulties of the sellers and telemarketers. It will eliminate confusion for consumers and make enforcement by regulators more efficient. It will eliminate the additional costs of administering multiple registries.

Citigroup has expressed support of a national registry, even though it would result in a DNC requirement in a significant number of states without such a requirement. A single reasonable regulation with broader nationwide coverage is preferable to a less pervasive patchwork of state laws with differing requirements. Similarly, Citigroup is willing to accept the expanded coverage of functionally regulated entities, such as banks and securities broker/dealers and insurance companies, which would be beyond the jurisdiction of the FTC Rule. Citigroup has long recognized in the context of its company DNC lists that it is not productive, and often counterproductive, to market to consumers who have a strong preference to avoid such marketing efforts. The key is to identify those consumers and to establish a uniform set of consumer expectations that Citigroup can act upon without undue administrative burden.

3. **In reconciling the coverage of the FTC Rule with the telephone solicitation regulations of the FCC, there are significant jurisdictional questions to be addressed by the FCC.**

The FTC's Rule prohibits telemarketing outbound calls to consumers located at numbers listed on the national DNC registry (section 310.4(b)(1)(iii)(A)). "Telemarketing" is defined as "a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones and involves more than one interstate telephone call." There are two elements of this definition that are more limited than the FCC's definition of telephone solicitation.

First, there must be a "plan, program, or campaign" rather than a number of random or unrelated calls. In the *Federal Register* notice accompanying its release of the amended Telemarketing Sales Rule (at p. 4655), the FTC cited the example of a real estate professional making random calls to prospective consumers. The FTC stated that such a real estate professional would escape the coverage of the Rule because such calls would not be part of a plan or program or campaign. The FCC regulation, 47 C.F.R. 64.1200(e) and (f), however, appears to address any call to solicit for the purchase of goods or services, even a single call.

In addition, the FTC cited the fact that most real estate agents made calls only to prospects who can be contacted locally, or at least by calls in the same state. The FTC Rule does not address calls, even significant numbers of telephone calls, if there is not more than one interstate call. Again, the jurisdiction of this Commission extends to intrastate as well as interstate calls. The FCC definition of telephone solicitation does not allow any exception for purely intrastate calls. This jurisdictional inconsistency of the two rules must be reconciled. Citigroup urges the Commission to define calls prohibited by the national DNC registry by adopting the telemarketing definition in the FTC Rule. At a minimum, this Commission should exempt intrastate calls where no interstate calls are made.

Without a reconciliation of these definitional or jurisdictional inconsistencies, the effect would be to increase the coverage of the Rule to catch the very types of calls that the FTC thought to be exempt. The FTC was addressing the real estate agent scenario by way of asserting that calls to arrange face-to-face meetings need not be exempted from the DNC requirements of the Rule. (Such calls are exempt from the portions of the Rule dealing with deceptive practices because there is no sale being made and the deceptive practices that are prohibited by the Rule cannot occur in the absence of a sale.)

The real estate agent cited by the FTC did not need an exception for calls that simply sought a face-to-face meeting because the agent would be able to escape coverage on the basis of the absence of a plan or program or because the calls would likely be solely intrastate calls. If these exemptions were not available, perhaps the FTC would have provided for an exception for calls to arrange face-to-face meetings. Unless the FCC acts, the adoption of the FTC DNC provisions under the broader FCC jurisdiction

provided by the TCPA would significantly expand the scope of the national DNC registry provisions. Action by this Commission to mirror the words of the DNC provisions of the FTC Rule, in fact, would expand the coverage and reach of that Rule. The FCC should strive to reconcile the effect and not merely the words of the FCC proposal and the FTC Rule. It can do so by defining the telephone solicitations to be covered by the DNC provisions consistently with the definition of "telemarketing" in the FTC Rule.

4. The FCC must decide whether it will adopt the FTC fee requirement for access to the national DNC registry.

The FTC has proposed to charge sellers rather than telemarketers for access to the national DNC registry. While the fees appear to be based on a realistic assessment of the cost of a national DNC registry and while they avoid the duplication of charging both the seller and the seller's third party telemarketer for access to the list, Citigroup believes that the current proposal has one serious flaw. The fees to be charged to any complex financial organization on a cumulative basis could be substantial because the FTC is proposing to charge each legal vehicle and each separate business division of a legal vehicle for access to the DNC list.

The FCC must first decide whether to impose any fee requirement on functionally regulated sellers. If such sellers do not use third party marketers or subsidiaries to telemarket, and, therefore, are subject only to the jurisdiction of this Commission rather than the FTC, presumably the FTC fee schedule will not apply. This could create a dual structure of sellers with access to the list and an incentive for companies to move telemarketing operations into exempt companies rather than to use third party marketers or subsidiaries.

Citigroup believes that a more rational, but uniform, fee structure is preferable. Such a structure should be based on a company's own definition of its separate lines of business rather than any artificial legal vehicle structure or business division structure. The additional coverage of functionally regulated entities should offset, to some degree, the revenues lost by treating separate legal vehicles within the same type of business as a single seller for purposes of DNC registration. Such an approach would more closely reflect actual business organization and would avoid multiple registration fees for the same business.

The Citigroup contacts with respect to this letter and all aspects of the proposal are the undersigned at 212-559-2938 or James Scott, Senior Regulatory Counsel, at 212-559-2485 (scottj@citigroup.com).

Very truly yours,

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General Counsel-Bank Regulatory